

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CASE NO. 4:24-CR-00010 HEA

UNITED STATES OF AMERICA

vs.

MOHD AZFAR MALIK, M.D.

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**OBJECTIONS TO THE MEMORANDUM OPINION AND ORDER
AND REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 89)**

Dr. Mohd Azfar Malik, through undersigned counsel and pursuant to 28 U.S.C. § 636, objects to the Memorandum Opinion and Order and Report and Recommendation that was entered by the Honorable Shirley Padmore Mensah on August 16, 2024, recommending that the Court deny Dr. Malik's Motion to Dismiss. (Doc. 89).

In his Motion to Dismiss, Dr. Malik moved for dismissal of Count 2, conspiracy to commit health care fraud in violation of 18 U.S.C. § 1347(a)(1) & (2), and Counts 15–21, making false statements related to health care matters in violation of 18 U.S.C. §§ 1035 & 2.¹ The Magistrate Judge recommended that the Court deny the

¹ In his Motion to Dismiss, Dr. Malik also moved to dismiss Counts 1, 5, 6, and 22, of the Indictment. However, because the Magistrate Judge found, on separate grounds, that the Indictment was defective as to those Counts (among other drug trafficking counts), the Magistrate Judge did not consider or address the arguments

Motion to Dismiss because according to the court, the Indictment made clear the offenses charged and sufficiently set forth the underlying transactions which form the basis of the charged offenses. The Magistrate Judge concluded that Dr. Malik's arguments urging dismissal were tantamount to an attack of the sufficiency of the government's evidence and did not serve as a basis for the dismissal of the Indictment.

Dr. Malik objects to the Magistrate Judge's reasoning and conclusions for all the reasons articulated in his Motion to Dismiss and in his Reply in Support of the Motion to Dismiss. (DE 55, 75). The Government criminally charged Dr. Malik for allegedly violating regulations associated with the practice of medicine. Dr. Malik's Motion and Reply demonstrate that none of the regulations were violated as a matter of law, necessitating dismissal. Dr. Malik did not attack the sufficiency of the Government's case; rather, Dr. Malik argued that the Government misinterpreted the regulations and could not proceed on an Indictment based on misinterpretations of the law.

The Government has informed counsel that it will be superseding the indictment in this matter; therefore, we file these objections in order to preserve the record and so that we may again file the motion to dismiss against the next version of the indictment. Once that happens, this Court should find that the Indictment

made in the alternative in the instant Motion for the dismissal of those Counts. (Doc. 89, n.1).

fails to state a claim because the Government misinterpreted the regulations as a matter of law and dismiss the Indictment.

Respectfully submitted,

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